



**MICHIGAN
LEAGUE OF
CONSERVATION
VOTERS**

Date: September 6th, 2017

To: Members of the House Local Government Committee

From: Charlotte Jameson, Government Affairs Director, Michigan League of Conservation Voters

Re: Testimony in opposition to House Bill 4290

Michigan League of Conservation Voters (LCV) is the non-partisan, political voice for Michigan's land, air, and water. On behalf of our statewide membership and our Board of Directors, Michigan LCV expresses our opposition to House Bill 4290. House Bill 4290 places an undue burden on property owners and residents impacted by sewer overflows by insulating government agencies from responsibility for property damage claims attributed to insufficient infrastructure capacity for significant rain events.

Michigan residents are currently able to seek damages for property loss from local governments if a sanitary sewage system backs up and discharges raw sewage into their home. However, property owners in Michigan do have a high bar to clear to avoid an immunity defense and make damage claims under current Michigan law.¹ In fact, in the 15 years since passage of the current law, less than twenty million dollars in damages have been paid out by local governments in the entire State of Michigan.

House Bill 4290 would keep the current high burden of proof for homeowners and add additional requirements making the bar to clear for compensation for property damage unreasonable. More specifically, the bill would grant government immunity from a sewage disposal event if the rainfall at or near the affected area or within the sewage disposal system service area is 1.7 inches or more in any one-hour period or 3.3 inches in any continuous 24-hour period. According to the United States Department of Commerce Weather Bureau, rainfall events of that degree can currently be expected to occur as often as every five years.

Additionally due to climate change we know that severe rainstorms will become more frequent and more intense resulting in more episodes of flooding. Already a 2014 report from the Natural Resources Defense Council documented an 89 percent increase in the annual frequency of extreme precipitation events—defined as 2 inches or more in a day—across Michigan over the last 50 years. The data is further broken out regionally, with storms having increased by 62% in the Upper Peninsula; 42% in northern portions of the Lower Peninsula; and 128% in southern Michigan. According to the House Fiscal Agency's analysis of the same bill introduced last session, "the bill sponsor worked with the Department of Environmental Quality (DEQ) to compile data on rainfall over the last 60-70 years, and to ensure that a municipality is only protected from liability for sewage system failures caused by much higher than usual rainfall."

Unfortunately, because the sponsor did not take into account climate change's likelihood to increase severe weather events, the determination of what a "much higher than usual rainfall" looks like based only on data from past decades has resulted in a vastly underestimated rainfall levels. As a result, the bill puts homeowners on the hook for damages that are a result of the

¹ Property owners must demonstrate that they suffered property damage or physical injuries from a sewage disposal system event, that the agency against which the claim is made is "an appropriate government agency," that the sewage disposal system had a defect, that the agency knew or should have known about the defect, that the defect was a substantial proximate cause of the event and the property damage or physical injury, that there is reasonable proof of ownership and the value of any damaged personal property, and that that the property owners provided advance notice of the claim to the agency.

inability of our infrastructure to handle levels of flooding from rainfall events that currently happen every 5 years and will likely happen with greater frequency than that going forward.

Furthermore, the rain limits contained in the bill are less stringent than those required by the Michigan DEQ before a government agency can discharge sewage directly into the Great Lakes. The DEQ only allows the discharge of untreated sewage into a lake or river where the rain exceeded a 25 year event. Typically, the MDEQ defines a 25 year rain event as 1.92 inches of rain in an hour and 4.09 inches of rain in 24 hours. At a minimum we should be as protective of private property as we are of the Great Lakes.

Finally, HB 4290 allows immunity for sewer systems designed and constructed to meet state water quality standards and permits set by the DEQ. In doing so, HB 4290 allows compliance with a water quality law to limit liability for damage to private property. Water quality standards, however, are designed to protect the quality of our rivers and lakes; they are not appropriate yardsticks for determining liability for sewer system failures that damage private property.

Michigan is particularly vulnerable to extreme storms due to a heavy reliance on combined sewer systems, an older type of system which carries both storm water and sewage in the same pipes. When the system is overwhelmed during severe rainfalls, the combined sewers discharge untreated sewage directly into local streams, rivers, and homes. Michigan has 46 combined sewer systems- the third-most in the nation. House Bill 4290 is not a solution to the flooding problem facing Michigan's local governments and residents, it merely further shifts the costs of the problem from local governments to unsuspecting homeowners. We urge the committee to focus on finding proactive solutions to our inadequate infrastructure, like investing in infrastructure upgrades and building out green infrastructure, including the elimination of impervious ground surfaces that don't allow water to soak through, and constructing bioswales, wetlands, rain gardens and other methods that allow rain and snowmelt to more naturally filter into the ground, rather than running off into city sewers.

Michigan LCV is not advocating in favor of local governments being saddled with large damages from property loss, but we also do not support penalizing private property owners for infrastructure failures that are out of their control. Given the flooding challenges our communities are facing, we should be focused on updating and upgrading our infrastructure so that it can handle the challenge of more frequent and severe storms. Instead of adopting HB 4290, we encourage the Michigan Legislature to find sustainable funding for needed infrastructure investments.